

FILED
COURT OF CRIMINAL APPEALS
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November 10, 2017

Deana Williamson, Clerk of the Court
Court of Criminal Appeals
P.O. Box 12308
Austin, Texas 78711Re: *Vera Elizabeth Guthrie-Nail v. The State of Texas*
Cause number PD-0441-17

Dear Ms. Williamson:

This letter-brief is submitted in response to Petitioner's brief filed October 13, 2017. The State believes that Petitioner is entitled to the limited relief she seeks in this appeal.

Petitioner originally appealed the trial court's signing of a judgment *nunc pro tunc* in 2012. The court of appeals upheld this ruling. *Guthrie-Nail v. State* ("Guthrie-Nail I"), No. 05-13-00016-CR (Tex. App.—Dallas Jan. 8, 2014) (not designated for publication). On review, this Court concluded that the record was not clear regarding whether the trial court intended to make a deadly weapon finding at the time of the original trial and whether the trial court was aware it was not *required* to make such a finding. *Guthrie-Nail v. State* ("Guthrie-Nail II"), 506 S.W.3d 1, 7 (Tex. Crim. App. 2015). It reversed the judgment of the court of appeals and remanded the case to the trial court "for proceedings consistent with" its opinion. *Id.*

The trial court subsequently conducted a hearing on December 16, 2016. It concluded that it was aware at the time of the original proceeding that it did not have to make a deadly weapon finding but that it nonetheless did intend to do so. Because the omission of the deadly weapon finding from the judgment was a clerical mistake, it concluded that, “The affirmative finding stands, as far as I am concerned.” Appellant timely filed a notice of appeal. The Dallas Court of Appeals, however, dismissed this appeal on March 28, 2017. *Guthrie-Nail v. State* (“*Guthrie-Nail III*”), No. 05-17-00030-CR, 2017 WL 1149676, at *2 (Tex. App.—Dallas Mar. 28, 2017) (not designated for publication). It concluded that the trial court had not entered an appealable order and it accordingly had no jurisdiction over the appeal. Petitioner’s petition for review of that ruling was granted by this Court.

Petitioner is entitled to appellate review of the judgment *nunc pro tunc*. The *Guthrie-Nail I* court upheld the judgment, but it did not have the benefit of the trial court’s fact findings that this Court deemed necessary in *Guthrie-Nail II*. Petitioner is entitled to an appellate review of the judgment in light of those findings. The appealable order in this case is the judgment *nunc pro tunc*. Petitioner’s filing a notice of appeal on the same day as the findings were issued was timely to invoke the appellate court’s jurisdiction. Thus, while the State believes the judgment *nunc pro tunc* was proper and should be upheld, it joins Petitioner’s request to overturn the Dallas court’s dismissal and remand for consideration of the judgment *nunc pro tunc*.

Thank you for your assistance in bringing this matter to the Court’s attention.

Sincerely,

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